

Part 1 General Provisions

34A-2-101 Title.

This chapter shall be known as the "Workers' Compensation Act."

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-102 Definition of terms.

(1) As used in this chapter:

- (a) "Average weekly wages" means the average weekly wages as determined under Section 34A-2-409.
- (b) "Award" means a final order of the commission as to the amount of compensation due:
 - (i) an injured employee; or
 - (ii) a dependent of a deceased employee.
- (c) "Compensation" means the payments and benefits provided for in this chapter or Chapter 3, Utah Occupational Disease Act.
- (d)
 - (i) "Decision" means a ruling of:
 - (A) an administrative law judge; or
 - (B) in accordance with Section 34A-2-801:
 - (I) the commissioner; or
 - (II) the Appeals Board.
 - (ii) "Decision" includes:
 - (A) an award or denial of a medical, disability, death, or other related benefit under this chapter or Chapter 3, Utah Occupational Disease Act; or
 - (B) another adjudicative ruling in accordance with this chapter or Chapter 3, Utah Occupational Disease Act.
- (e) "Director" means the director of the division, unless the context requires otherwise.
- (f) "Disability" means an administrative determination that may result in an entitlement to compensation as a consequence of becoming medically impaired as to function. Disability can be total or partial, temporary or permanent, industrial or nonindustrial.
- (g) "Division" means the Division of Industrial Accidents.
- (h) "Impairment" is a purely medical condition reflecting an anatomical or functional abnormality or loss. Impairment may be either temporary or permanent, industrial or nonindustrial.
- (i) "Order" means an action of the commission that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.
- (j)
 - (i) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of the employee's employment.
 - (ii) "Personal injury by accident arising out of and in the course of employment" does not include a disease, except as the disease results from the injury.
- (k) "Safe" and "safety," as applied to employment or a place of employment, means the freedom from danger to the life or health of employees reasonably permitted by the nature of the employment.

- (1) "Workers' Compensation Fund" means the nonprofit, quasi-public corporation created in Title 31A, Chapter 33, Workers' Compensation Fund.
- (2) As used in this chapter and Chapter 3, Utah Occupational Disease Act:
 - (a) "Brother or sister" includes a half brother or sister.
 - (b) "Child" includes:
 - (i) a posthumous child; or
 - (ii) a child legally adopted prior to an injury.

Amended by Chapter 90, 2008 General Session

34A-2-103 Employers enumerated and defined -- Regularly employed -- Statutory employers -- Exceptions.

- (1)
 - (a) The state, and each county, city, town, and school district in the state are considered employers under this chapter and Chapter 3, Utah Occupational Disease Act.
 - (b) For the purposes of the exclusive remedy in this chapter and Chapter 3, Utah Occupational Disease Act, prescribed in Sections 34A-2-105 and 34A-3-102, the state is considered to be a single employer and includes any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.
- (2)
 - (a) Except as provided in Subsection (4), each person, including each public utility and each independent contractor, who regularly employs one or more workers or operatives in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.
 - (b) As used in this Subsection (2):
 - (i) "Independent contractor" means any person engaged in the performance of any work for another who, while so engaged, is:
 - (A) independent of the employer in all that pertains to the execution of the work;
 - (B) not subject to the routine rule or control of the employer;
 - (C) engaged only in the performance of a definite job or piece of work; and
 - (D) subordinate to the employer only in effecting a result in accordance with the employer's design.
 - (ii) "Regularly" includes all employments in the usual course of the trade, business, profession, or occupation of the employer, whether continuous throughout the year or for only a portion of the year.
- (3)
 - (a) The client under a professional employer organization agreement regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act:
 - (i) is considered the employer of a covered employee; and
 - (ii) subject to Section 31A-40-209, shall secure workers' compensation benefits for a covered employee by complying with Subsection 34A-2-201(1) or (2) and commission rules.
 - (b) The division shall promptly inform the Insurance Department if the division has reason to believe that a professional employer organization is not in compliance with Subsection 34A-2-201(1) or (2) and commission rules.
- (4) A domestic employer who does not employ one employee or more than one employee at least 40 hours per week is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act.

- (5)
- (a) As used in this Subsection (5):
- (i)
- (A) "agricultural employer" means a person who employs agricultural labor as defined in Subsections 35A-4-206(1) and (2) and does not include employment as provided in Subsection 35A-4-206(3); and
- (B) notwithstanding Subsection (5)(a)(i)(A), only for purposes of determining who is a member of the employer's immediate family under Subsection (5)(a)(ii), if the agricultural employer is a corporation, partnership, or other business entity, "agricultural employer" means an officer, director, or partner of the business entity;
- (ii) "employer's immediate family" means:
- (A) an agricultural employer's:
- (I) spouse;
- (II) grandparent;
- (III) parent;
- (IV) sibling;
- (V) child;
- (VI) grandchild;
- (VII) nephew; or
- (VIII) niece;
- (B) a spouse of any person provided in Subsections (5)(a)(ii)(A)(II) through (VIII); or
- (C) an individual who is similar to those listed in Subsection (5)(a)(ii)(A) or (B) as defined by rules of the commission; and
- (iii) "nonimmediate family" means a person who is not a member of the employer's immediate family.
- (b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a member of the employer's immediate family.
- (c) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is not considered an employer of a nonimmediate family employee if:
- (i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was less than \$8,000; or
- (ii)
- (A) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees was equal to or greater than \$8,000 but less than \$50,000; and
- (B) the agricultural employer maintains insurance that covers job-related injuries of the employer's nonimmediate family employees in at least the following amounts:
- (I) \$300,000 liability insurance, as defined in Section 31A-1-301; and
- (II) \$5,000 for health care benefits similar to benefits under health care insurance as defined in Section 31A-1-301.
- (d) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an agricultural employer is considered an employer of a nonimmediate family employee if:
- (i) for the previous calendar year the agricultural employer's total annual payroll for all nonimmediate family employees is equal to or greater than \$50,000; or
- (ii)
- (A) for the previous year the agricultural employer's total payroll for nonimmediate family employees was equal to or exceeds \$8,000 but is less than \$50,000; and

- (B) the agricultural employer fails to maintain the insurance required under Subsection (5)(c)(ii)(B).
- (6) An employer of agricultural laborers or domestic servants who is not considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, may come under this chapter and Chapter 3, Utah Occupational Disease Act, by complying with:
 - (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
 - (b) the rules of the commission.
- (7)
 - (a)
 - (i) As used in this Subsection (7)(a), "employer" includes any of the following persons that procures work to be done by a contractor notwithstanding whether or not the person directly employs a person:
 - (A) a sole proprietorship;
 - (B) a corporation;
 - (C) a partnership;
 - (D) a limited liability company; or
 - (E) a person similar to one described in Subsections (7)(a)(i)(A) through (D).
 - (ii) If an employer procures any work to be done wholly or in part for the employer by a contractor over whose work the employer retains supervision or control, and this work is a part or process in the trade or business of the employer, the contractor, all persons employed by the contractor, all subcontractors under the contractor, and all persons employed by any of these subcontractors, are considered employees of the original employer for the purposes of this chapter and Chapter 3, Utah Occupational Disease Act.
 - (b) Any person who is engaged in constructing, improving, repairing, or remodeling a residence that the person owns or is in the process of acquiring as the person's personal residence may not be considered an employee or employer solely by operation of Subsection (7)(a).
 - (c) A partner in a partnership or an owner of a sole proprietorship is not considered an employee under Subsection (7)(a) if the employer who procures work to be done by the partnership or sole proprietorship obtains and relies on either:
 - (i) a valid certification of the partnership's or sole proprietorship's compliance with Section 34A-2-201 indicating that the partnership or sole proprietorship secured the payment of workers' compensation benefits pursuant to Section 34A-2-201; or
 - (ii) if a partnership or sole proprietorship with no employees other than a partner of the partnership or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
 - (A) the partnership or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and
 - (B) the partner or owner personally waives the partner's or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership or sole proprietorship.
 - (d) A director or officer of a corporation is not considered an employee under Subsection (7)(a) if the director or officer is excluded from coverage under Subsection 34A-2-104(4).
 - (e) A contractor or subcontractor is not an employee of the employer under Subsection (7)(a), if the employer who procures work to be done by the contractor or subcontractor obtains and relies on either:
 - (i) a valid certification of the contractor's or subcontractor's compliance with Section 34A-2-201; or

- (ii) if a partnership, corporation, or sole proprietorship with no employees other than a partner of the partnership, officer of the corporation, or owner of the sole proprietorship, a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, stating that:
 - (A) the partnership, corporation, or sole proprietorship is customarily engaged in an independently established trade, occupation, profession, or business; and
 - (B) the partner, corporate officer, or owner personally waives the partner's, corporate officer's, or owner's entitlement to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, in the operation of the partnership's, corporation's, or sole proprietorship's enterprise under a contract of hire for services.
- (f)
 - (i) For purposes of this Subsection (7)(f), "eligible employer" means a person who:
 - (A) is an employer; and
 - (B) procures work to be done wholly or in part for the employer by a contractor, including:
 - (I) all persons employed by the contractor;
 - (II) all subcontractors under the contractor; and
 - (III) all persons employed by any of these subcontractors.
 - (ii) Notwithstanding the other provisions in this Subsection (7), if the conditions of Subsection (7)(f)(iii) are met, an eligible employer is considered an employer for purposes of Section 34A-2-105 of the contractor, subcontractor, and all persons employed by the contractor or subcontractor described in Subsection (7)(f)(i)(B).
 - (iii) Subsection (7)(f)(ii) applies if the eligible employer:
 - (A) under Subsection (7)(a) is liable for and pays workers' compensation benefits as an original employer under Subsection (7)(a) because the contractor or subcontractor fails to comply with Section 34A-2-201;
 - (B)
 - (I) secures the payment of workers' compensation benefits for the contractor or subcontractor pursuant to Section 34A-2-201;
 - (II) procures work to be done that is part or process of the trade or business of the eligible employer; and
 - (III) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):
 - (Aa) adopts the workplace accident and injury reduction program;
 - (Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and
 - (Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program; or
 - (C)
 - (I) obtains and relies on:
 - (Aa) a valid certification described in Subsection (7)(c)(i) or (7)(e)(i);
 - (Bb) a workers' compensation coverage waiver described in Subsection (7)(c)(ii) or (7)(e)(ii); or
 - (Cc) proof that a director or officer is excluded from coverage under Subsection 34A-2-104(4);
 - (II) is liable under Subsection (7)(a) for the payment of workers' compensation benefits if the contractor or subcontractor fails to comply with Section 34A-2-201;
 - (III) procures work to be done that is part or process in the trade or business of the eligible employer; and

(IV) does the following with regard to a written workplace accident and injury reduction program that meets the requirements of Subsection 34A-2-111(3)(d):

(Aa) adopts the workplace accident and injury reduction program;

(Bb) posts the workplace accident and injury reduction program at the work site at which the eligible employer procures work; and

(Cc) enforces the workplace accident and injury reduction program according to the terms of the workplace accident and injury reduction program.

(8)

(a) For purposes of this Subsection (8), "unincorporated entity" means an entity organized or doing business in the state that is not:

(i) an individual;

(ii) a corporation; or

(iii) publicly traded.

(b) For purposes of this chapter and Chapter 3, Utah Occupational Disease Act, an unincorporated entity that is required to be licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, is presumed to be the employer of each individual who holds, directly or indirectly, an ownership interest in the unincorporated entity. Notwithstanding Subsection (7)(c) and Subsection 34A-2-104(3), the unincorporated entity shall provide the individual who holds the ownership interest workers' compensation coverage under this chapter and Chapter 3, Utah Occupational Disease Act, unless the presumption is rebutted under Subsection (8)(c).

(c) Pursuant to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, an unincorporated entity may rebut the presumption under Subsection (8)(b) for an individual by establishing by clear and convincing evidence that the individual:

(i) is an active manager of the unincorporated entity;

(ii) directly or indirectly holds at least an 8% ownership interest in the unincorporated entity; or

(iii) is not subject to supervision or control in the performance of work by:

(A) the unincorporated entity; or

(B) a person with whom the unincorporated entity contracts.

(d) As part of the rules made under Subsection (8)(c), the commission may define:

(i) "active manager";

(ii) "directly or indirectly holds at least an 8% ownership interest"; and

(iii) "subject to supervision or control in the performance of work."

(9)

(a) As used in this Subsection (9), "home and community based services" means one or more of the following services provided to an individual with a disability or to the individual's family that helps prevent the individual with a disability from being placed in a more restrictive setting:

(i) respite care;

(ii) skilled nursing;

(iii) nursing assistant services;

(iv) home health aide services;

(v) personal care and attendant services;

(vi) other in-home care, such as support for the daily activities of the individual with a disability;

(vii) specialized in-home training for the individual with a disability or a family member of the individual with a disability;

(viii) specialized in-home support, coordination, and other supported living services; and

- (ix) other home and community based services unique to the individual with a disability or the family of the individual with a disability that help prevent the individual with a disability from being placed in a more restrictive setting.
 - (b) Notwithstanding Subsection (4) and subject to Subsection (9)(c), an individual with a disability or designated representative of the individual with a disability is considered an employer under this chapter and Chapter 3, Utah Occupational Disease Act, of an individual who provides home and community based services if the individual with a disability or designated representative of the individual with a disability:
 - (i) employs the individual to provide home and community based services for seven hours per week or more; and
 - (ii) pays the individual providing the home and community based services from state or federal money received by the individual with a disability or designated representative of the individual with a disability to fund home and community based services, including through a person designated by the Secretary of the Treasury in accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person who has the control, receipt, custody, or disposal of, or pays the wages of, the individual providing the home and community based services.
 - (c) The state and federal money received by an individual with a disability or designated representative of an individual with a disability shall include the cost of the workers' compensation coverage required by this Subsection (9) in addition to the money necessary to fund the home and community based services that the individual with a disability or family of the individual with a disability is eligible to receive so that the home and community based services are not reduced in order to pay for the workers' compensation coverage required by this Subsection (9).
- (10)
- (a) For purposes of this Subsection (10), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
 - (b) For purposes of determining whether two or more persons are considered joint employers under this chapter or Chapter 3, Utah Occupational Disease Act, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (11)
- (a) As used in this Subsection (11):
 - (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
 - (b) For purposes of this chapter, a franchisor is not considered to be an employer of:
 - (i) a franchisee; or
 - (ii) a franchisee's employee.
 - (c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (11) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

34A-2-104 "Employee," "worker," and "operative" defined -- Specific circumstances -- Exemptions.

- (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" mean:
 - (a)
 - (i) an elective or appointive officer and any other person:
 - (A) in the service of:
 - (I) the state;
 - (II) a county, city, or town within the state; or
 - (III) a school district within the state;
 - (B) serving the state, or any county, city, town, or school district under:
 - (I) an election;
 - (II) appointment; or
 - (III) any contract of hire, express or implied, written or oral; and
 - (ii) including:
 - (A) an officer or employee of the state institutions of learning; and
 - (B) a member of the National Guard while on state active duty; and
 - (b) a person in the service of any employer, as defined in Section 34A-2-103, who employs one or more workers or operatives regularly in the same business, or in or about the same establishment:
 - (i) under any contract of hire:
 - (A) express or implied; and
 - (B) oral or written;
 - (ii) including aliens and minors, whether legally or illegally working for hire; and
 - (iii) not including any person whose employment:
 - (A) is casual; and
 - (B) not in the usual course of the trade, business, or occupation of the employee's employer.
- (2)
 - (a) Unless a lessee provides coverage as an employer under this chapter and Chapter 3, Utah Occupational Disease Act, any lessee in mines or of mining property and each employee and sublessee of the lessee shall be:
 - (i) covered for compensation by the lessor under this chapter and Chapter 3, Utah Occupational Disease Act;
 - (ii) subject to this chapter and Chapter 3, Utah Occupational Disease Act; and
 - (iii) entitled to the benefits of this chapter and Chapter 3, Utah Occupational Disease Act, to the same extent as if the lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees for substantially similar work.
 - (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount equal to the insurance premium for that type of work.
- (3)
 - (a) A partnership or sole proprietorship may elect to include any partner of the partnership or owner of the sole proprietorship as an employee of the partnership or sole proprietorship under this chapter and Chapter 3, Utah Occupational Disease Act.
 - (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a), the partnership or sole proprietorship shall serve written notice upon its insurance carrier naming the persons to be covered.
 - (c) A partner of a partnership or owner of a sole proprietorship may not be considered an employee of the partner's partnership or the owner's sole proprietorship under this chapter or

Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (3)(b) is given.

- (d) For premium rate making, the insurance carrier shall assume the salary or wage of the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the state's average weekly wage.
- (4)
 - (a) A corporation may elect not to include any director or officer of the corporation as an employee under this chapter and Chapter 3, Utah Occupational Disease Act.
 - (b) If a corporation makes an election under Subsection (4)(a), the corporation shall serve written notice naming the individuals who are directors or officers to be excluded from coverage:
 - (i) upon its insurance carrier, if any; or
 - (ii) upon the commission if the corporation is self-insured or has no employee other than the one or more directors or officers being excluded.
 - (c) A corporation may exclude no more than five individuals who are directors or officers under Subsection (4)(b)(ii).
 - (d) An exclusion under this Subsection (4) is subject to Subsection 34A-2-103(7)(d).
 - (e) A director or officer of a corporation is considered an employee under this chapter and Chapter 3, Utah Occupational Disease Act, until the notice described in Subsection (4)(b) is given.
 - (f) The commission may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form of the notice described in Subsection (4)(b)(ii), including a requirement to provide documentation, if any.
- (5) As used in this chapter and Chapter 3, Utah Occupational Disease Act, "employee," "worker," and "operative" do not include:
 - (a) a sales agent or associate broker, as defined in Section 61-2f-102, who performs services in that capacity for a principal broker if:
 - (i) substantially all of the sales agent's or associate broker's income for services is from real estate commissions; and
 - (ii) the sales agent's or associate broker's services are performed under a written contract that provides that:
 - (A) the real estate agent is an independent contractor; and
 - (B) the sales agent or associate broker is not to be treated as an employee for federal income tax purposes;
 - (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as required by federal statute or regulation;
 - (c) an individual who for an insurance producer, as defined in Section 31A-1-301, solicits, negotiates, places, or procures insurance if:
 - (i) substantially all of the individual's income from those services is from insurance commissions; and
 - (ii) the services of the individual are performed under a written contract that states that the individual:
 - (A) is an independent contractor;
 - (B) is not to be treated as an employee for federal income tax purposes; and
 - (C) can derive income from more than one insurance company; or
 - (d) subject to Subsections (6), (7), and (8), an individual who:
 - (i)
 - (A) owns a motor vehicle; or
 - (B) leases a motor vehicle to a motor carrier;

- (ii) personally operates the motor vehicle described in Subsection (5)(d)(i);
- (iii) operates the motor vehicle described in Subsection (5)(d)(i) under a written agreement with the motor carrier that states that the individual operates the motor vehicle as an independent contractor; and
- (iv)
 - (A) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by the commission, a copy of a workers' compensation coverage waiver issued pursuant to Part 10, Workers' Compensation Coverage Waivers Act, to the individual; and
 - (B) provides to the motor carrier at the time the written agreement described in Subsection (5)(d)(iii) is executed or as soon after the execution as provided by an insurer, proof that the individual is covered by occupational accident related insurance with the coverage and benefit limits listed in Subsection (7)(c).
- (6) An individual described in Subsection (5)(d) may become an employee under this chapter and Chapter 3, Utah Occupational Disease Act, if the employer of the individual complies with:
 - (a) this chapter and Chapter 3, Utah Occupational Disease Act; and
 - (b) commission rules.
- (7) For purposes of Subsection (5)(d):
 - (a) "Motor carrier" means a person engaged in the business of transporting freight, merchandise, or other property by a commercial vehicle on a highway within this state.
 - (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways, including a trailer or semitrailer designed for use with another motorized vehicle.
 - (c) "Occupational accident related insurance" means insurance that provides the following coverage at a minimum aggregate policy limit of \$1,000,000 for all benefits paid, including medical expense benefits, for an injury sustained in the course of working under a written agreement described in Subsection (5)(d)(iii):
 - (i) disability benefits;
 - (ii) death benefits; and
 - (iii) medical expense benefits, which include:
 - (A) hospital coverage;
 - (B) surgical coverage;
 - (C) prescription drug coverage; and
 - (D) dental coverage.
- (8) For an individual described in Subsection (5)(d), the commission shall verify the existence of occupational accident insurance coverage with the coverage and benefit limits listed in Subsection (7)(c) before the commission may issue a workers' compensation coverage waiver to the individual pursuant to Part 10, Workers' Compensation Coverage Waivers Act.

Amended by Chapter 303, 2014 General Session

34A-2-104.5 Nongovernment entity volunteers.

- (1) As used in this section:
 - (a)
 - (i) "Intern" means a student or trainee who works without pay at a trade or occupation in order to gain work experience.
 - (ii) Notwithstanding Subsection (1)(a)(i), "intern" does not include an intern described in Section 53A-29-103 or 53B-16-403.
 - (b) "Nongovernment entity" means an entity or individual that:

- (i) is an employer as provided in Section 34A-2-103; and
 - (ii) is not a government entity.
- (c) "Utah minimum wage" means the highest wage designated as Utah's minimum wage under Title 34, Chapter 40, Utah Minimum Wage Act.
- (d)
 - (i) "Volunteer" means an individual who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising nongovernment entity.
 - (ii) "Volunteer" includes an intern of a nongovernment entity.
 - (iii) "Volunteer" does not include an individual participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter.
- (2) A volunteer for a nongovernment entity is not an employee of the nongovernment entity for purposes of this chapter and Chapter 3, Utah Occupational Disease Act, unless the nongovernment entity elects in accordance with this section to provide coverage under this chapter and Chapter 3, Utah Occupational Disease Act.
- (3)
 - (a) A nongovernment entity may elect to secure coverage for all of the nongovernment entity's volunteers by obtaining coverage for the volunteers in accordance with Section 34A-2-201 under the same policy it uses to cover the nongovernment entity's employees.
 - (b) If a nongovernment entity obtains coverage under Section 34A-2-201 for the nongovernment entity's volunteers, for purposes of receiving benefits under this chapter and Chapter 3, Utah Occupational Disease Act:
 - (i) a volunteer is considered an employee of the nongovernment entity; and
 - (ii) these benefits are the exclusive remedy of the volunteer in accordance with Section 34A-2-105 for an industrial injury or disease covered by this chapter and Chapter 3, Utah Occupational Disease Act.
- (4) A nongovernment entity shall keep sufficient records of the nongovernment entity's volunteers and the volunteers' duties to determine compliance with this section.
- (5) To compute the disability compensation benefits under Subsection (3), the disability compensation shall be calculated in accordance with Part 4, Compensation and Benefits, with the average weekly wage of the nongovernment volunteer assumed to be the Utah minimum wage at the time of the industrial accident or occupational disease that is the basis for the volunteer's workers' compensation claim.
- (6) A workers' compensation insurer shall calculate the premium for a nongovernment entity's volunteer on the basis of the Utah minimum wage on the actual hours the volunteer provides service to the nongovernment entity, except that a workers' compensation insurer may assume 30 hours worked per week if the nongovernment entity does not provide a record of actual hours worked. The imputed wages shall be assigned to the class code on the policy that best describes the volunteer's duties.
- (7) The failure or refusal of a nongovernment entity to make an election under this section in regard to volunteers does not alter, have an effect on, or give rise to any implication or presumption regarding:
 - (a) the nongovernment entity's duties or liabilities with respect to volunteers; or
 - (b) the rights of volunteers.
- (8) Subject to Subsection (3)(b)(ii), nothing in this section affects a volunteer's right to seek remedies available to the volunteer through a personal insurance policy that the volunteer

obtains for the volunteer in addition to any workers' compensation benefits obtained under this section.

- (9) A nongovernment entity shall notify a volunteer of an election under Subsection (3)(a) by posting:
- (a) printed notices where volunteers are likely to see the notices in conspicuous places about the nongovernment entity's place of business; and
 - (b) notices on a website that the nongovernment entity uses to recruit or provide information to volunteers.

Enacted by Chapter 390, 2016 General Session

34A-2-105 Exclusive remedy against employer, and officer, agent, or employee of employer.

- (1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, is the exclusive remedy against the employer and is the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter is in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and an action at law may not be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section prevents an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.
- (2) The exclusive remedy provisions of this section apply to both the client and the professional employer organization in a coemployment relationship regulated under Title 31A, Chapter 40, Professional Employer Organization Licensing Act.
- (3)
- (a) For purposes of this section:
 - (i) "Temporary employee" means an individual who for temporary work assignment is:
 - (A) an employee of a temporary staffing company; or
 - (B) registered by or otherwise associated with a temporary staffing company.
 - (ii) "Temporary staffing company" means a company that engages in the assignment of individuals as temporary full-time or part-time employees to fill assignments with a finite ending date to another independent entity.
 - (b) If the temporary staffing company secures the payment of workers' compensation in accordance with Section 34A-2-201 for all temporary employees of the temporary staffing company, the exclusive remedy provisions of this section apply to both the temporary staffing company and the client company and its employees and provide the temporary staffing company the same protection that a client company and its employees has under this section for the acts of any of the temporary staffing company's temporary employees on assignment at the client company worksite.

Amended by Chapter 318, 2008 General Session

34A-2-106 Injuries or death caused by wrongful acts of persons other than employer, officer, agent, or employee of employer -- Rights of employer or insurance carrier in cause

of action -- Maintenance of action -- Notice of intention to proceed against third party -- Right to maintain action not involving employee-employer relationship -- Disbursement of proceeds of recovery -- Exclusive remedy.

- (1) When any injury or death for which compensation is payable under this chapter or Chapter 3, Utah Occupational Disease Act is caused by the wrongful act or neglect of a person other than an employer, officer, agent, or employee of the employer:
 - (a) the injured employee, or in case of death, the employee's dependents, may claim compensation; and
 - (b) the injured employee or the employee's heirs or personal representative may have an action for damages against the third person.
- (2)
 - (a) If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier:
 - (i) shall become trustee of the cause of action against the third party; and
 - (ii) may bring and maintain the action either in its own name or in the name of the injured employee, or the employee's heirs or the personal representative of the deceased.
 - (b) Notwithstanding Subsection (2)(a), an employer or insurance carrier may not settle and release a cause of action of which it is a trustee under Subsection (2)(a) without the consent of the commission.
- (3)
 - (a) Before proceeding against a third party, to give a person described in Subsections (3)(a)(i) and (ii) a reasonable opportunity to enter an appearance in the proceeding, the injured employee or, in case of death, the employee's heirs, shall give written notice of the intention to bring an action against the third party to:
 - (i) the carrier; and
 - (ii) any other person obligated for the compensation payments.
 - (b) The injured employee, or, in case of death, the employee's heirs, shall give written notice to the carrier and other person obligated for the compensation payments of any known attempt to attribute fault to the employer, officer, agent, or employee of the employer:
 - (i) by way of settlement; or
 - (ii) in a proceeding brought by the injured employee, or, in case of death, the employee's heirs.
- (4) For the purposes of this section and notwithstanding Section 34A-2-103, the injured employee or the employee's heirs or personal representative may also maintain an action for damages against any of the following persons who do not occupy an employee-employer relationship with the injured or deceased employee at the time of the employee's injury or death:
 - (a) a subcontractor;
 - (b) a general contractor;
 - (c) an independent contractor;
 - (d) a property owner; or
 - (e) a lessee or assignee of a property owner.
- (5) If any recovery is obtained against a third person, it shall be disbursed in accordance with Subsections (5)(a) through (c).
 - (a) The reasonable expense of the action, including attorney fees, shall be paid and charged proportionately against the parties as their interests may appear. Any fee chargeable to the employer or carrier is to be a credit upon any fee payable by the injured employee or, in the case of death, by the dependents, for any recovery had against the third party.

- (b) The person liable for compensation payments shall be reimbursed, less the proportionate share of costs and attorney fees provided for in Subsection (5)(a), for the payments made as follows:
 - (i) without reduction based on fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be less than 40% prior to any reallocation of fault under Subsection 78B-5-819(2); or
 - (ii) less the amount of payments made multiplied by the percentage of fault attributed to the employer, officer, agent, or employee of the employer in the action against the third party if the combined percentage of fault attributed to persons immune from suit is determined to be 40% or more prior to any reallocation of fault under Subsection 78B-5-819(2).
- (c) The balance shall be paid to the injured employee, or the employee's heirs in case of death, to be applied to reduce or satisfy in full any obligation thereafter accruing against the person liable for compensation.
- (6) The apportionment of fault to the employer in a civil action against a third party is not an action at law and does not impose any liability on the employer. The apportionment of fault does not alter or diminish the exclusiveness of the remedy provided to employees, their heirs, or personal representatives, or the immunity provided employers pursuant to Section 34A-2-105 or 34A-3-102 for injuries sustained by an employee, whether resulting in death or not. Any court in which a civil action is pending shall issue a partial summary judgment to an employer with respect to the employer's immunity as provided in Section 34A-2-105 or 34A-3-102, even though the conduct of the employer may be considered in allocating fault to the employer in a third party action in the manner provided in Sections 78B-5-817 through 78B-5-823.

Amended by Chapter 3, 2008 General Session

34A-2-107 Appointment of workers' compensation advisory council -- Composition -- Terms of members -- Duties -- Compensation.

- (1) The commissioner shall appoint a workers' compensation advisory council composed of:
 - (a) the following voting members:
 - (i) five employer representatives; and
 - (ii) five employee representatives; and
 - (b) the following nonvoting members:
 - (i) a representative of the Workers' Compensation Fund;
 - (ii) a representative of a private insurance carrier;
 - (iii) a representative of health care providers;
 - (iv) the Utah insurance commissioner or the insurance commissioner's designee; and
 - (v) the commissioner or the commissioner's designee.
- (2) Employers and employees shall consider nominating members of groups who historically may have been excluded from the council, such as women, minorities, and individuals with disabilities.
- (3)
 - (a) Except as required by Subsection (3)(b), as terms of current council members expire, the commissioner shall appoint each new member or reappointed member to a two-year term beginning July 1 and ending June 30.
 - (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council

members are staggered so that approximately half of the council is appointed every two years.

- (4)
 - (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
 - (b) The commissioner shall terminate the term of a council member who ceases to be representative as designated by the member's original appointment.
- (5) The council shall confer at least quarterly for the purpose of advising the commission, the division, and the Legislature on:
 - (a) the Utah workers' compensation and occupational disease laws;
 - (b) the administration of the laws described in Subsection (5)(a); and
 - (c) rules related to the laws described in Subsection (5)(a).
- (6) Regarding workers' compensation, rehabilitation, and reemployment of employees who acquire a disability because of an industrial injury or occupational disease the council shall:
 - (a) offer advice on issues requested by:
 - (i) the commission;
 - (ii) the division; and
 - (iii) the Legislature; and
 - (b) make recommendations to:
 - (i) the commission; and
 - (ii) the division.
- (7) The council shall study how hospital costs may be reduced for purposes of medical benefits for workers' compensation. The council shall report to the Business and Labor Interim Committee the council's recommendations by no later than November 30, 2017.
- (8) The commissioner or the commissioner's designee shall serve as the chair of the council and call the necessary meetings.
- (9) The commission shall provide staff support to the council.
- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 242, 2016 General Session

34A-2-108 Void agreements between employers and employees.

- (1) Except as provided in Section 34A-2-420, an agreement by an employee to waive the employee's rights to compensation under this chapter or Chapter 3, Utah Occupational Disease Act, is not valid.
- (2) An agreement by an employee to pay any portion of the premium paid by his employer is not valid.
- (3) Any employer who deducts any portion of the premium from the wages or salary of any employee entitled to the benefits of this chapter or Chapter 3, Utah Occupational Disease Act:
 - (a) is guilty of a misdemeanor; and
 - (b) shall be fined not more than \$100 for each such offense.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-109 Interstate and intrastate commerce.

- (1) Except as provided in Subsection (2), this chapter and Chapter 3, Utah Occupational Disease Act, apply to employers and their employees engaged in:
- (a) intrastate commerce;
 - (b) interstate commerce; and
 - (c) foreign commerce.
- (2) If a rule of liability or method of compensation is established by the Congress of the United States as to interstate or foreign commerce, this chapter and Chapter 3, Utah Occupational Disease Act, apply only to the extent that:
- (a) this chapter and Chapter 3, Utah Occupational Disease Act, has a mutual connection with intrastate work; and
 - (b) the connection to intrastate work is clearly separable and distinguishable from interstate or foreign commerce.

Renumbered and Amended by Chapter 375, 1997 General Session

34A-2-110 Workers' compensation insurance fraud -- Elements -- Penalties -- Notice.

- (1) As used in this section:
- (a) "Corporation" has the same meaning as in Section 76-2-201.
 - (b) "Intentionally" has the same meaning as in Section 76-2-103.
 - (c) "Knowingly" has the same meaning as in Section 76-2-103.
 - (d) "Person" has the same meaning as in Section 76-1-601.
 - (e) "Recklessly" has the same meaning as in Section 76-2-103.
 - (f) "Thing of value" means one or more of the following obtained under this chapter or Chapter 3, Utah Occupational Disease Act:
 - (i) workers' compensation insurance coverage;
 - (ii) disability compensation;
 - (iii) a medical benefit;
 - (iv) a good;
 - (v) a professional service;
 - (vi) a fee for a professional service; or
 - (vii) anything of value.
- (2)
- (a) A person is guilty of workers' compensation insurance fraud if that person intentionally, knowingly, or recklessly:
 - (i) devises a scheme or artifice to do the following by means of a false or fraudulent pretense, representation, promise, or material omission:
 - (A) obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act;
 - (B) avoid paying the premium that an insurer charges, for an employee on the basis of the underwriting criteria applicable to that employee, to obtain a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; or
 - (C) deprive an employee of a thing of value under this chapter or Chapter 3, Utah Occupational Disease Act; and
 - (ii) communicates or causes a communication with another in furtherance of the scheme or artifice.
 - (b) A violation of this Subsection (2) includes a scheme or artifice to:
 - (i) make or cause to be made a false written or oral statement with the intent to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease

- Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
 - (ii) form a business, reorganize a business, or change ownership in a business with the intent to:
 - (A) obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act, at a rate that does not reflect the risk, industry, employer, or class code actually covered by the insurance coverage;
 - (B) misclassify an employee as described in Subsection (2)(b)(iii); or
 - (C) deprive an employee of workers' compensation coverage as required by Subsection 34A-2-103(8);
 - (iii) misclassify an employee as one of the following so as to avoid the obligation to obtain insurance coverage as mandated by this chapter or Chapter 3, Utah Occupational Disease Act:
 - (A) an independent contractor;
 - (B) a sole proprietor;
 - (C) an owner;
 - (D) a partner;
 - (E) an officer; or
 - (F) a member in a limited liability company;
 - (iv) use a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act, to deprive an employee of workers' compensation coverage under this chapter or Chapter 3, Utah Occupational Disease Act; or
 - (v) collect or make a claim for temporary disability compensation as provided in Section 34A-2-410 while working for gain.
- (3)
- (a) Workers' compensation insurance fraud under Subsection (2) is punishable in the manner prescribed in Subsection (3)(c).
 - (b) A corporation or association is guilty of the offense of workers' compensation insurance fraud under the same conditions as those set forth in Section 76-2-204.
 - (c)
 - (i) In accordance with Subsection (3)(c)(ii), the determination of the degree of an offense under Subsection (2) shall be measured by the following on the basis of which creates the greatest penalty:
 - (A) the total value of all property, money, or other things obtained or sought to be obtained by the scheme or artifice described in Subsection (2); or
 - (B) the number of individuals not covered under this chapter or Chapter 3, Utah Occupational Disease Act, because of the scheme or artifice described in Subsection (2).
 - (ii) A person is guilty of:
 - (A) a class A misdemeanor:
 - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is less than \$1,000; or
 - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is less than five;
 - (B) a third degree felony:
 - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than \$1,000, but is less than \$5,000; or

- (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than five, but is less than 50; and
- (C) a second degree felony:
 - (I) if the value of the property, money, or other thing of value described in Subsection (3)(c)(i)(A) is equal to or greater than \$5,000; or
 - (II) for each individual described in Subsection (3)(c)(i)(B), if the number of individuals described in Subsection (3)(c)(i)(B) is equal to or greater than 50.
- (4) The following are not a necessary element of an offense described in Subsection (2):
 - (a) reliance on the part of a person;
 - (b) the intent on the part of the perpetrator of an offense described in Subsection (2) to permanently deprive a person of property, money, or anything of value; or
 - (c) an insurer or self-insured employer giving written notice in accordance with Subsection (5) that workers' compensation insurance fraud is a crime.
- (5)
 - (a) An insurer or self-insured employer who, in connection with this chapter or Chapter 3, Utah Occupational Disease Act, prints, reproduces, or furnishes a form described in Subsection (5)(b) shall cause to be printed or displayed in comparative prominence with other content on the form the statement: "Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison."
 - (b) Subsection (5)(a) applies to a form upon which a person:
 - (i) applies for insurance coverage;
 - (ii) applies for a workers' compensation coverage waiver issued under Part 10, Workers' Compensation Coverage Waivers Act;
 - (iii) reports payroll;
 - (iv) makes a claim by reason of accident, injury, death, disease, or other claimed loss; or
 - (v) makes a report or gives notice to an insurer or self-insured employer.
 - (c) An insurer or self-insured employer who issues a check, warrant, or other financial instrument in payment of compensation issued under this chapter or Chapter 3, Utah Occupational Disease Act, shall cause to be printed or displayed in comparative prominence above the area for endorsement a statement substantially similar to the following: "Workers' compensation insurance fraud is a crime punishable by Utah law."
 - (d) This Subsection (5) applies only to the legal obligations of an insurer or a self-insured employer.
 - (e) A person who violates Subsection (2) is guilty of workers' compensation insurance fraud, and the failure of an insurer or a self-insured employer to fully comply with this Subsection (5) is not:
 - (i) a defense to violating Subsection (2); or
 - (ii) grounds for suppressing evidence.
- (6) In the absence of malice, a person, employer, insurer, or governmental entity that reports a suspected fraudulent act relating to a workers' compensation insurance policy or claim is not subject to civil liability for libel, slander, or another relevant cause of action.
- (7) In an action involving workers' compensation, this section supersedes Title 31A, Chapter 31, Insurance Fraud Act.

Amended by Chapter 328, 2011 General Session

Amended by Chapter 413, 2011 General Session

34A-2-111 Managed health care programs -- Other safety programs.

(1) As used in this section:

(a)

(i) "Health care provider" means a person who furnishes treatment or care to persons who have suffered bodily injury.

(ii) "Health care provider" includes:

(A) a hospital;

(B) a clinic;

(C) an emergency care center;

(D) a physician;

(E) a nurse;

(F) a nurse practitioner;

(G) a physician's assistant;

(H) a paramedic; or

(I) an emergency medical technician.

(b) "Physician" means any health care provider licensed under:

(i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

(ii) Title 58, Chapter 24b, Physical Therapy Practice Act;

(iii) Title 58, Chapter 67, Utah Medical Practice Act;

(iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

(vi) Title 58, Chapter 70a, Physician Assistant Act;

(vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;

(viii) Title 58, Chapter 72, Acupuncture Licensing Act;

(ix) Title 58, Chapter 73, Chiropractic Physician Practice Act; and

(x) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse.

(c) "Preferred health care facility" means a facility:

(i) that is a health care facility as defined in Section 26-21-2; and

(ii) designated under a managed health care program.

(d) "Preferred provider physician" means a physician designated under a managed health care program.

(e) "Self-insured employer" is as defined in Section 34A-2-201.5.

(2)

(a) A self-insured employer and insurance carrier may adopt a managed health care program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).

(b)

(i) A preferred provider program may be developed if the preferred provider program allows a selection by the employee of more than one physician in the health care specialty required for treating the specific problem of an industrial patient.

(ii)

(A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:

(I) preferred provider physicians; and

(II) preferred health care facilities.

- (B) If a preferred provider program is not developed, an employee may have free choice of health care providers.
- (iii) The failure to do the following may, if the employee has been notified of the preferred provider program, result in the employee being obligated for any charges in excess of the preferred provider allowances:
 - (A) use a preferred health care facility; or
 - (B) initially receive treatment from a preferred provider physician.
- (iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a self-insured employer or other employer may:
 - (A)
 - (I)
 - (Aa) have its own health care facility on or near its worksite or premises; and
 - (Bb) continue to contract with other health care providers; or
 - (II) operate a health care facility; and
 - (B) require employees to first seek treatment at the provided health care or contracted facility.
- (v) An employee subject to a preferred provider program or employed by an employer having its own health care facility may procure the services of any qualified health care provider:
 - (A) for emergency treatment, if a physician employed in the preferred provider program or at the health care facility is not available for any reason;
 - (B) for conditions the employee in good faith believes are nonindustrial; or
 - (C) when an employee living in a rural area would be unduly burdened by traveling to:
 - (I) a preferred provider physician; or
 - (II) a preferred health care facility.
- (c)
 - (i)
 - (A) An employer, insurance carrier, or self-insured employer may enter into contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):
 - (I) health care providers;
 - (II) medical review organizations; or
 - (III) vendors of medical goods, services, and supplies including medicines.
 - (B) A contract described in Subsection (2)(c)(i)(A) may be made for the following purposes:
 - (I) insurance carriers or self-insured employers may form groups in contracting for managed health care services with health care providers;
 - (II) peer review;
 - (III) methods of utilization review;
 - (IV) use of case management;
 - (V) bill audit;
 - (VI) discounted purchasing; and
 - (VII) the establishment of a reasonable health care treatment protocol program including the implementation of medical treatment and quality care guidelines that are:
 - (Aa) scientifically based;
 - (Bb) peer reviewed; and
 - (Cc) consistent with standards for health care treatment protocol programs that the commission shall establish by rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including the authority of the commission to approve a health care treatment protocol program before it is used or disapprove a health care treatment protocol program that does not comply with this Subsection (2)(c)(i)(B)(VII).

- (ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a condition of insuring an entity in its insurance contract.
- (3)
- (a) In addition to a managed health care program, an insurance carrier may require an employer to establish a work place safety program if the employer:
 - (i) has an experience modification factor of 1.00 or higher, as determined by the National Council on Compensation Insurance; or
 - (ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or higher.
 - (b) A workplace safety program may include:
 - (i) a written workplace accident and injury reduction program that:
 - (A) promotes safe and healthful working conditions; and
 - (B) is based on clearly stated goals and objectives for meeting those goals; and
 - (ii) a documented review of the workplace accident and injury reduction program each calendar year delineating how procedures set forth in the program are met.
 - (c) A written workplace accident and injury reduction program permitted under Subsection (3)(b) (i) should describe:
 - (i) how managers, supervisors, and employees are responsible for implementing the program;
 - (ii) how continued participation of management will be established, measured, and maintained;
 - (iii) the methods used to identify, analyze, and control new or existing hazards, conditions, and operations;
 - (iv) how the program will be communicated to all employees so that the employees are informed of work-related hazards and controls;
 - (v) how workplace accidents will be investigated and corrective action implemented; and
 - (vi) how safe work practices and rules will be enforced.
 - (d) For the purposes of a workplace accident and injury reduction program of an eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury reduction program shall:
 - (i) include the provisions described in Subsections (3)(b) and (c), except that the employer shall conduct a documented review of the workplace accident and injury reduction program at least semiannually delineating how procedures set forth in the workplace accident and injury reduction program are met; and
 - (ii) require a written agreement between the employer and all contractors and subcontractors on a project that states that:
 - (A) the employer has the right to control the manner or method by which the work is executed;
 - (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor violates the workplace accident and injury reduction program, the employer maintains the right to:
 - (I) terminate the contract with the contractor or subcontractor;
 - (II) remove the contractor or subcontractor from the work site; or
 - (III) require that the contractor or subcontractor not permit an employee that violates the workplace accident and injury reduction program to work on the project for which the employer is procuring work; and
 - (C) the contractor or subcontractor shall provide safe and appropriate equipment subject to the right of the employer to:
 - (I) inspect on a regular basis the equipment of a contractor or subcontractor; and
 - (II) require that the contractor or subcontractor repair, replace, or remove equipment the employer determines not to be safe or appropriate.

- (4) The premiums charged to any employer who fails or refuses to establish a workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over any existing current rates and premium modifications charged that employer.

Amended by Chapter 258, 2015 General Session

34A-2-112 Administration of this chapter and Chapter 3.

- (1) Administration of this chapter and Chapter 3, Utah Occupational Disease Act, is vested in the commission to be administered through the division, the Division of Adjudication, and for administrative appeals through the commissioner and the Appeals Board.
- (2) The commission:
 - (a) has jurisdiction over every workplace in the state and may administer this chapter and Chapter 3, Utah Occupational Disease Act, and any rule or order issued under these chapters, to ensure that every employee in this state has a safe workplace in which employers have secured the payment of workers' compensation benefits for their employees in accordance with this chapter and Chapter 3, Utah Occupational Disease Act;
 - (b) through the division under the supervision of the director, has the duty and full authority to take any administrative action authorized under this chapter or Chapter 3, Utah Occupational Disease Act; and
 - (c) through the Division of Adjudication, commissioner, and Appeals Board, provide for the adjudication and review of an administrative action, decision, or order of the commission in accordance with this title.

Enacted by Chapter 375, 1997 General Session

34A-2-113 Designated agent required.

Each workers' compensation insurance carrier writing insurance in this state shall maintain a designated agent in this state that is:

- (1) registered with the division; and
- (2) authorized to receive on behalf of the workers' compensation insurance carrier all notices or orders provided for under this chapter or Chapter 3, Utah Occupational Disease Act.

Enacted by Chapter 295, 2006 General Session